IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Bail Appl..No. 4005 of 2007()

CRIME NO.166/07 OF PERINGHOM POLICE STATION.

PETITIONER: ACCUSED NO.1:

JOHNY KURIAKOSE, PULINGOM,
THIRUMENI P.O., PAYYANNUR.

BY ADV. SRI.B.KRISHNA MANI
SRI.JOSEPH T.JOHN

RESPONDENTS: COMPLAINANT:

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1. THE STATE OF KERALA REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
PERINGHOM POLICE STATION, PERINGHOM.

BY PUBLIC PROSECUTOR SRI.P.N. SUKUMARAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A.NO.4005 OF 2007

Dated this the 4th day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is the 1st accused in a crime registered, inter alia, under Sec.420 of the IPC. The crux of the allegations against the petitioner is that he, using bogus and non-genuine pattas, had defrauded the banks and induced them to part with loan amounts. The pattas were not genuine and were obtained fraudulently by the 1st accused in collusion with the 2nd accused. A crime has been registered on the basis of a complaint filed after the fraud was discovered in the course of the revenue recovery proceedings by the officials. Investigation is in progress. The petitioner apprehends imminent arrest. The 2nd accused is allegedly a person employed in the Land Tribunal. In collusion with him, the petitioner is alleged to have brought into existence the

non-genuine pattas.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The learned counsel points out that the pattas in question are not the ones issued in his name. They are issued in the name of the father and the brother of the petitioner. The petitioner had only acted as the holder of their Power-of-Attorney to pledge the documents and avail loan from the financial institutions. In these circumstances, the petitioner does not deserve to suffer the trauma of undeserved arrest and detention. Anticipatory bail may be granted to the petitioner, prays the learned counsel for the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the investigation is at a very early stage. It would be puerile now to assume that the petitioner – the Power-of-Attorney holder, has no contumacious responsibility for the culpable indiscretion committed and that all blame can be left at the doors of the father and brother of the petitioner in whose names the pattas now stand. At any rate, the petitioner may not be permitted to arm himself with an order of anticipatory bail which would effectively frustrate the ability of the Investigator to discover and arrive at the truth. Custodial interrogation is absolutely

essential in a case like this to unravel the truth, submits the learned Public Prosecutor.

3. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. This, I am satisfied, is a fit case where the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked in favour of the petitioner. This is an eminently fit case where the petitioner must resort to the normal and ordinary procedure of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. He must then seek regular bail in the ordinary course.

4. In the result, this petition is dismissed. But I may hasten to observe that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-
(R. BASANT, JUDGE)

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//true copy// P.S. To Judge